

Remarks/Arguments

In the Non-Final Office Action dated February 20, 2009, it is noted that claims 1, 2, 4-11, and 23-45 are pending; that claims 11 and 37 stand rejected under 35 U.S.C. §112, first paragraph; and that claims 1, 2, 4-11, and 23-45 stand rejected under 35 U.S.C. §103.

By this response, claim 11 has been amended to make an editorial change to a punctuation mark therein and claims 10, 41-42, and 44-45 have been cancelled without prejudice. The amendment is believed to be proper and justified. No new matter has been added.

Cited Art

The following references have been cited and applied against the claims in the present Office Action: U.S. Patent 7,010,808 to Leung et al. (hereinafter “*Leung*”); U.S. Patent Application Publication No. 2004/0103312 to Messerges et al. (hereinafter “*Messerges I*”); and U.S. Patent Application Publication No. 2004/0088541 to Messerges et al. (hereinafter “*Messerges II*”).

Rejection of Claims 1, 2, 4, 8-11, 23-42, and 44-45 under 35 U.S.C. §103

Claims 1, 2, 4, 8-11, 23-42, and 44-45 stand rejected under 35 U.S.C. §103 as being unpatentable over Leung in view of Messerges I. Claims 10, 41-42, and 44-45 have been cancelled. This rejection is respectfully traversed.

Claims 1, 4, 9, 11, 31, and 36 are independent base claims. Claims 2, 8, and 23-30 depend ultimately from claim 1; claims 32-35 depend directly from claim 31; and claims 37-40 depend ultimately from claim 36.

Claim 1 calls, in part, for:

A method for performing digital right management in a network, the method comprising:

...

measuring a distance between the first authorized device and the second authorized device, and

allowing, by means of exercising the subright, the second authorized device access to the associated content if the distance between the first authorized device and the second authorized device is smaller than a maximum access distance.

Neither Leung nor Messerges I teach, show, or suggest the limitations from claim 1 shown above.

Leung does not teach, show, or suggest either one of the limitations involving the features of “measuring” and “allowing” as shown above. Consistent with Applicants’ position, the present Office Action admits that Leung does not teach the “measuring” limitation. *See Office Action at page 4, third full paragraph.* Yet, the present Office Action indicates that Leung teaches the “measuring” and “allowing” features. *See Office Action at page 4, second full paragraph.* This assertion in the Office Action ignores the actual teachings of Leung and it does not follow logically from the admission concerning the “measuring” feature noted above.

Contrary to the assertion in the present Office Action, Leung does not teach, show, or suggest “measuring a distance between the first authorized device and the second authorized device, and allowing, by means of exercising the subright, the second authorized device access to the associated content if the distance between the first authorized device and the second authorized device is smaller than a maximum access distance,” as defined in claim 1. The present Office Action relies upon col. 2, lines 40-46 from Leung in support of the rejection. However, as seen from that portion of Leung reproduced in full immediately below, Leung does not base the transfer of content or the receipt of a digital license on a distance between the communicating devices or upon a comparison of such a distance with a threshold level such as a maximum access distance:

In the present invention, digital content is rendered on a device by transferring the content to the device and obtaining a digital license corresponding to the content. A sublicense corresponding to and based on the obtained license is composed and transferred to the device, and the content is rendered on the device only in accordance with the terms of the sub-license.

Leung fails to discuss any term of a license or sublicense being dependent on a distance between devices.

Distance is not measured or even mentioned in describing the device connection or content transfer in Leung. In fact, distance does not even appear to be a concern of Leung. Leung simply appears to require identifying information or ID about the portable device connected to the user’s computer. *See Leung at col. 35-36 and at Figures 13 and 14.* The connection between two devices shown and described by Leung is not limited by distance in any way. Further, the exemplary digital rights license and its attributes as described by Leung in cols. 27-29 fails to include any association to distance or a maximum access distance or any other distance threshold. Thus, Leung is not even remotely suggestive of either any distance

measuring between authorized devices or allowing exercise of rights based on the comparison of a distance measurement between two authorized devices to a distance threshold such as a maximum access distance.

Since the present Office Action already admits that the “measuring” limitation is not taught by Leung, it logically follows that Leung does not compute or know the distance between any devices in his network. Without knowledge of the distance between devices, it is not possible to perform a comparison to be performed between a distance that is not measured by Leung and a distance threshold such as a maximum access distance that is not contemplated by Leung. A careful inspection of the passage from Leung as reproduced above makes it clear that Leung does not even remotely suggest the measurement of a distance between devices, a maximum access distance, or the comparison of a maximum access distance to a measured distance. Thus, Leung fails to teach, show, or suggest the claimed limitations involving the measurement of a distance between authorized devices, the existence of a maximum access distance or any such distance threshold, the comparison of a measured distance between authorized devices and the maximum access distance, and the exercise of the sublicense rights to allow the second authorized device to have access to the licensed content provided that the distance between authorized devices is less than the maximum access distance.

According to the present Office Action, Messerges I is said to be added to Leung in order to cure the defects noted above in the teachings of Leung. *See Office Action at page 4, third full paragraph.* But Messerges I does not teach, show, or suggest the limitations in claim 1 missing from Leung. Specifically, Messerges I does not teach, show, or suggest “measuring the distance between the first and second authorized device” and “allowing, by means of exercising the subright, the second authorized device access to the associated content if the distance between the first authorized device and the second authorized device is smaller than a maximum access distance,” as defined in claim 1.

Messerges I appears to be concerned with a digital rights management system in which devices communicate over a short range communication link without any suggestion that a distance measurement be taken between two devices. Messerges I simply relies on the ability of devices to establish and maintain communications over the short range link. If a short range communication link can be established, then the device seeking registration in the domain of Messerges can be registered. If the short range communication link cannot be established, then

registration is not accomplished. There is no suggestion by Messerges I to actually measure a distance between the devices.

Messerges I does not perform a distance measurement as expressly required in claim 1. No such feature is expressly or impliedly defined in Messerges I. Thus, Messerges I cannot be interpreted as teaching or suggesting the measuring of distance between a first and second device. Although Messerges I appears to describe the setup of a close proximity channel between devices, there is no teaching, showing, or suggestion in Messerges I that the setup of such a channel requires the measurement of a distance between the devices. *See Messerges I at paragraphs [0019] and [0028], for example.* Messerges I even appears to desire a security system for the network that ensures transfer of digital rights management information over a short range communication channel so that it can be known that the “devices in the same domain were at one time physically near each other.” *See Messerges I at paragraph [0011].* But, even the desire to ensure close proximity and to be “physically near each other” does not mean that Messerges I performs any kind of distance measurement. It only shows that the devices in Messerges I have successfully established and communicated via a short range communication channel without the actual measurement of a distance between devices in the domain or network. Messerges I is totally devoid of any mention of measuring a distance between devices. Thus, Messerges I in combination with Leung fails to teach, show, or suggest the limitation of “measuring the distance between the first and second authorized device,” as defined in claim 1.

Since no measurement of distance of any kind is taught in Messerges I, it follows that Messerges I cannot be interpreted as teaching or suggesting the subsequent limitation of “allowing, by means of exercising the subright, the second authorized device access to the associated content if the distance between the first authorized device and the second authorized device is smaller than a maximum access distance.”

Furthermore, Leung teaches away from Messerges I. One ordinarily skilled in the art would not be motivated to combine the references or make the modification proposed in the Office Action, because Leung is based on a wired connection. Leung simply describes the portable device wired to the user’s computer. The connection between two devices shown and described by Leung does not in any way suggest application of the wireless connection as contended by the Office Action. Because Leung only teaches the wired connection and is based upon this connection for operation, Leung teaches away from modifying to a wireless communication as proposed by Messerges I.

In view of the remarks above, it is believed that Messerges I and Leung, separately and in combination, fail to teach all the elements of claim 1. Claims 2, 8, and 29-30 are ultimately dependent from claim 1 and include all the respective features thereof. Furthermore, each dependent claim contains additional distinguishing patentable features. Therefore, it is also believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of these dependent claims for all the reasons set forth with respect to claim 1 above.

Claims 4, 9, and 11 are independent claims, each of which includes features substantially identical to those discussed above for claim 1. For all the reasons set forth above with respect to claim 1, it is also believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of independent claims 4, 9, and 11. Since claims 26-28 are directly dependent from claim 4 and include all the features thereof, with each dependent claim containing further distinguishing patentable features, it is also believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of these dependent claims for all the reasons set forth above with respect to claims 1 and 4. Since claims 23-25 are ultimately dependent from claim 11 and include all the features thereof, with each dependent claim containing further distinguishing patentable features, it is also believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of these dependent claims for all the reasons set forth above with respect to claims 1 and 11.

Claim 31 is an independent claim that includes, in part, the following features:

*determine a distance between the device and the second device, and
distribute the subbright to the second device if the distance is less than a
predefined maximum distribution distance.*

These features are believed to be substantially similar to the features discussed above with respect to claim 1 and the applied references. For all the reasons set forth above and in view of the substantial similarity of these features to the features in claim 1, it is believed that Messerges I and Leung, separately and in combination, also fail to teach, show, or suggest all the elements of independent claim 31. Claims 32-35 are directly dependent from claim 31 and include all the features thereof. Furthermore, each dependent claim contains additional distinguishing patentable features. Therefore, it is believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of these dependent claims.

Claim 36 includes the following feature:

transmit a response signal to a first signal that is received from the other device to facilitate determination, at the other device, of a distance between the device and the other device, the response signal being based on the first signal and a secret that is shared between the device and the other device.
[Emphasis supplied].

This feature is believed to be substantially similar to at least one feature discussed above for claim 1. For all the reasons set forth above and in view of the substantial similarity of this feature, it is also believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of independent claim 36. Claims 37-40 are ultimately dependent from claim 36 and include all the features thereof. Furthermore, each dependent claim contains additional distinguishing patentable features. Therefore, it is believed that Messerges I and Leung, separately and in combination, also fail to teach all the elements of these dependent claims.

In light of these remarks, it is believed that claims 1, 2, 4, 8, 9, 11, and 23-40 would not have been obvious to a person of ordinary skill in the art upon a reading of Messerges I and Leung, separately or in combination. Thus, it is submitted that claims 1, 2, 4, 8, 9, 11, and 23-40 are allowable under 35 U.S.C. §103. Withdrawal of this rejection is respectfully requested.

Rejection of Claims 5-7 under 35 U.S.C. §103

Claims 5-7 stand rejected under 35 U.S.C. §103 as being unpatentable over Leung in view of Messerges I and further in view of Messerges II. This rejection is respectfully traversed.

Claims 5-7 are dependent from independent base claim 4, and include all the limitations of the independent base claim while introducing additional patentable limitations therein. Claim 4 has been patentably distinguished from Leung and Messerges I above. The defects in the combination in Leung and Messerges I with respect to claim 4 have been set forth above and pertain equally herein.

Messerges II has been added to the combination of Messerges I and Leung because, as stated in the present Office Action at page 11, “Leung fails to teach the method of having size of the authorized domain.” Messerges II states that “the key issuer ... can act as the domain manager and allow a multiple, but limited, number of devices to be provisioned with the same private key.” *See Messerges II at paragraph [0047]*. Even if this apparent teaching of Messerges II were to be interpreted as suggested in the present Office Action, an interpretation with which Applicants neither agree nor acquiesce, Messerges II still lacks any teaching,

showing, or suggestion that would cure the defects in the teachings of Leung and Messerges I as discussed above, That is, Messerges II in combination with Leung and Messerges I fails to teach or suggest the limitations of “measuring the distance between the first and second authorized device” and “allowing, by means of exercising the subright, the second authorized device access to the associated content if the distance between the first authorized device and the second authorized device is smaller than a maximum access distance,” as defined in independent base claim 4. Therefore, it is believed that Messerges I, Messerges II, and Leung, separately and in combination, fail to teach all the elements of claims 5-7 dependent from independent base claim 4.

In light of these remarks, it is believed that claims 5-7, which include all the limitations of base claim 4, would not have been obvious to a person of ordinary skill in the art upon a reading of Messerges I, Messerges II, and Leung, separately or in combination. Thus, it is submitted that claims 5-7 are allowable under 35 U.S.C. §103. Withdrawal of this rejection is respectfully requested.

Conclusion

In view of the foregoing, it is respectfully submitted that all the claims pending in this patent application are in condition for allowance. Entry of this amendment, reconsideration of this application, and allowance of all the claims are respectfully solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner contact the Applicants’ attorney, so that a mutually convenient date and time for a telephonic interview may be scheduled for resolving such issues as expeditiously as possible.

Respectfully submitted,

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Serial No. 10/596,104

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May 19, 2009